IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12681 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SOEB AHMED PAPPU AZAZ AHMED SIDDIKI

Versus

COMMISSIONER OF POLICE

Appearance:

MR MM SHAIKH, for Petitioner

MR SP DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 26/04/2001

ORAL JUDGEMENT

#. The petitioner above named, has preferred this petition under Article 226 of the Constitution of India, for appropriate writ order or direction for quashing and setting aside an order dated 10.8.2000 recorded by the Commission of Police, Shahibag, Ahmedabad City exercising

powers under Section 3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short, `the Act'), finding the petitioner to be a dangerous person and holding that his activities are detrimental to the society at large and there is likelihood of breach of public order.

#. The aforesaid order of the detention has been challenged by the petitioner on several grounds, one of the grounds is that the respondent has taken a plea of privilege under Section 9(2) of the Act and the names of the witnesses have not been disclosed, on account of the said privilege. That in fact there was no application of mind on the part of the detaining authority to the material supplied to him and therefore the order in question is illegal and deserves to be quashed and set aside. The petitioner has, therefore, prayed for quashing and setting aside the order of his detention.

#. On receiving the petition, rule was issued and Mr.S.P.Dave, learned AGP appears on behalf all the respondents and waives service. He has also filed an affidavit of detaining authority at page 28.

#. I have heard the learned advocates for the parties and have perused the papers. As the said above, the learned advocate for the petitioner has contended that there is non application of mind on the part of the detaining authority. In support of the said argument he has argued that in ground no.9 of page -7 it has been stated therein that the names of the two witnesses have not been disclosed by the detaining authority under Section 9(2) of the Act in the public interest. It has also been stated in the petition that the statements of these witnesses were recorded on 8.8.2000 by the Police Inspector, P.C.B., Ahmedabad City, and the said statements have been verified by the Commissioner of Police, Ahmedabad on 9.8.2000 and thereafter impugned order of detention has been passed on 10.8.2000. That in view of above position there appears to be no genuine effort to verify the genuineness and correctness of the aforesaid statements and there was no time leg for proper verification and proper application of mind. That therefore on one hand the case suffers from non application of mind and on the other hand, since the names of witnesses have not been disclosed, the petitioner the petitioner could not avail of an opportunity of making effective representation under Article 22(5) of the Constitution of the India and therefore the order in question is illegal and deserves to be set aside.

#. In support of the aforesaid argument, the learned advocate for the petitioner has relied upon a decision of Kalidas Kahar v. State, reported in 1993 (2) GLR 1659. The Division Bench of this Court has considered this aspect during the course of para-6 of the judgment, it has been observed as follows:

"His second contention is that the detaining authority has wrongly exercised the powers under section 9(2) of the PASA Act and by such wrong exercise of powers the detenue, right to make a representation under Art. 22(5) of the Constitution has been infringed. He further elaborates his submission by pointing gout that the statements of the witnesses have been recorded on 16th October, 1992 and that the said statements have been verified by the Superintendent of Police "C" Division, Baroda City, on 16th October, 1992. It has been pointed out by the learned AGP Mr. Y.M. Thakkar that the proposal in the case was made on 16th October, 1992 and the order of detention was passed on 17th October, 1992. It is rather curious that the entire bunch of material was supplied by the sponsoring authority at the time of making a proposal and that has been promptly accepted by the detaining authority and passed the order on the next day itself. At the time of exercising the privilege under section 9(2) of the PASA, the balance is required to be struck between the public interest on the one hand and the right of the detenue to make a representation under Art. 22(5) of the Constitution on the other. If the statements of the witnesses are to be relied upon, they must be genuine statements of the real persons. The detenue would like to verify as to whether these persons are fictitious persons or not and/or whether their statements are bogus statements or not? Unless the detenue knows the names and addresses of the persons who have given the statements, he cannot verify the aforesaid facts and if the names and addresses along with the contents of the statements are supplied to the detenue, he can have full opportunity to verify the position and make an effective representation on that basis. As against this, there is a provision under section 9(2) carved out on the basis of Art. 22(5) of the Constitution which provides that nothing in

> sub-section (1) shall require the authority making such order to disclose facts which considers to be against the public interest to disclose. Therefore, it is a duty of the detaining authority to strike a balance as stated above, that in the public interest, the names and addresses of the witnesses could not be disclosed. This should not be treated as an idle formality as it affects the public interest on the one hand and the right of the detenue on the other. When that is so, the detaining authority is expected to do some exercise before actually exercising privilege under section 9(2) of the PASA. Looking to the facts and circumstances of the case, it is clear, as stated hereinabove, that the verified statements were also placed before the detaining authority and there was no sufficient time for the detaining authority to examine the possibility of exercising the power under section 9(2) as the proposal was made on 16th October, 1992 and the order of detention was passed on the following day i.e. on 17th October, 1992 nor is there any material to show as to how he examined the necessity of exercising the power under section 9(2). Under the circumstances, in our view, it is a wrong exercise of power under section 9(2), which has affected the detenue's right of making effective representation under Art. 22(5) of the Constitution of India and therefore the illegal and impugned detention order is required to be quashed and set aside."

#. In the present case also as stated above the statement of two witnesses were recorded on 8.8.2000, and the same have been verified by the Commissioner of Police, Ahmedabad City on 9.8.2000 and the detention order was passed on 8.10.2000. If we consider the facts and circumstances of the case of Kalidas Kahar v. State of Gujarat (Supra) and the fact and circumstances of this case, it would be apparent that the facts are almost similar and identical. The Division Bench of this Court in that case has found that, it is a wrong exercise of power under Sec. 9(2) which has affected the detenue's right of making an effective representation under Article 22(5) of the Constitution of India and therefore, the impugned detention order is required to be quashed and set aside.

#. Considering the identical facts and circumstances of the case, the same finding is required to be recorded in

the present case also. In above view of the matter even in this case further continuation of detention of the petitioner stands illegal and vitiated. The result is that the detaining authority could not have arrived at a subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. In that view of the matter the exercise of powers under Section 9(2), to that extent, would stand vitiated as having been exercised without actual application of mind. The entire order of detention, therefore, stands vitiated and it is required to be quashed and set aside.

#. For the foregoing reasons this petition is ordered to be allowed and order of detention dated 10.8.2000 passed by the Commissioner of Police, Ahmedabad City, respondent no.1 herein, is quashed and set aside. The detenue is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute. Direct Service is permitted.

(D. P. BUCH, J.)

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